



General Assembly

February Session, 2006

Raised Bill No. 5816

LCO No. 3339

03339_____JUD

Referred to Committee on Judiciary

Introduced by:
(JUD)

***AN ACT PERMITTING EMPLOYERS TO COLLECT ADMINISTRATIVE
FEES FOR PROCESSING INCOME WITHHOLDING ORDERS FOR
CHILD SUPPORT PAYMENTS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 52-362 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2006*):

3 (a) For purposes of this section:

4 (1) "Dependent" means a spouse, former spouse or child entitled to
5 payments under a support order, provided Support Enforcement
6 Services of the Superior Court or the state acting under an assignment
7 of a dependent's support rights or under an application for child
8 support enforcement services shall, through an officer of Support
9 Enforcement Services or the Bureau of Child Support Enforcement
10 within the Department of Social Services or an investigator of the
11 Department of Administrative Services or the Attorney General, take
12 any action which the dependent could take to enforce a support order;

13 (2) "Disposable earnings" means that part of the earnings of an
14 individual remaining after deduction from those earnings of amounts

15 required to be withheld for the payment of federal, state and local
16 income taxes, employment taxes, normal retirement contributions,
17 union dues and initiation fees, and group life and health insurance
18 premiums;

19 (3) "Earnings" means any debt accruing to an obligor by reason of
20 such obligor's personal services, including any compensation payable
21 by an employer to an employee for such personal services whether
22 denominated as wages, salary, commission, bonus or otherwise,
23 including unemployment compensation if a purchase of service
24 agreement between the Commissioner of Social Services and the Labor
25 Commissioner is in effect pursuant to subsection (e) of section 17b-179;

26 (4) "Employer" means any person, including the Labor
27 Commissioner, who owes earnings to an obligor;

28 (5) "Income" means any periodic form of payment due to an
29 individual, regardless of source, including, but not limited to,
30 disposable earnings, workers' compensation and disability benefits,
31 payments pursuant to a pension or retirement program and interest;

32 (6) "Obligor" means a person required to make payments under a
33 support order;

34 (7) "Support order" means a court order, or order of a family
35 support magistrate including an agreement approved by a court or a
36 family support magistrate, that requires the payment to a dependent of
37 either current support payments, payments on an arrearage, or both;

38 (8) "Unemployment compensation" means any compensation
39 payable under chapter 567, including amounts payable by the
40 administrator of the unemployment compensation law pursuant to an
41 agreement under any federal law providing for compensation,
42 assistance or allowances with respect to unemployment.

43 (b) The Superior Court and any family support magistrate shall
44 issue an order for withholding pursuant to this section against the

45 income of an obligor to enforce a support order when the support
46 order is entered or modified or when the obligor is before the court in
47 an enforcement proceeding. The court shall order the withholding to
48 be effective immediately or may, for cause or pursuant to an
49 agreement by the parties, order a contingent withholding to be
50 effective only on accrual of a delinquency in an amount greater than or
51 equal to thirty days' obligation. Any finding that there is cause not to
52 order withholding to be effective immediately shall be based on at
53 least (1) a written determination that, and explanation by the court or
54 family support magistrate of why, implementing immediate income
55 withholding would not be in the best interests of the child, and (2)
56 proof of timely payment of previously ordered support in cases
57 involving the modification of such support. Before the court or family
58 support magistrate issues an order for withholding which is effective
59 immediately against an obligor who is before the court or a family
60 support magistrate, [it] the court or family support magistrate shall
61 inform the obligor of the minimum amount of income which is exempt
62 from withholding under state and federal law, of such obligor's right
63 to claim any applicable state or federal exemptions with respect thereto
64 and of such obligor's right to offer any evidence as to why a
65 withholding order effective immediately should not issue. If the court
66 or family support magistrate issues an order for withholding to be
67 effective immediately against a nonappearing obligor, notice shall be
68 served subsequently upon the obligor in accordance with section 52-
69 57, as amended, or sent by certified mail, return receipt requested, to
70 the obligor's last known address, informing such obligor: (A) That a
71 support order has been issued to be enforced by an income
72 withholding order, (B) that an income withholding order has been
73 issued effective immediately as part of the support order, (C) of the
74 minimum amount of income exempt from withholding under state
75 and federal law and of such obligor's right at the hearing on the
76 support order to claim any other applicable state or federal exemptions
77 with respect thereto, (D) of such obligor's right to a hearing, upon
78 motion to the court, to offer any evidence as to why the withholding

79 order effective immediately should not continue in effect, (E) of the
80 amount of income received by such obligor which formed the basis for
81 the support order against such obligor, and (F) of such obligor's right
82 to move to modify the support order if such obligor's income has
83 changed substantially or if the support order substantially deviates
84 from the child support guidelines established pursuant to section
85 46b-215a.

86 (c) (1) If an obligor is delinquent on support payments on any prior
87 order of support in an amount greater than or equal to thirty days'
88 obligation, whether or not such order is subject to a contingent income
89 withholding, such obligor shall become subject to withholding and the
90 dependent shall cause a delinquency notice to be served on such
91 obligor. The delinquency notice shall include a claim form and be in
92 clear and simple language informing the obligor that (A) such obligor
93 is delinquent under the support order in a specified amount and any
94 additional amounts accruing until the effective date of the withholding
95 order, (B) a withholding order has become effective against such
96 obligor's income, (C) such obligor has fifteen days to request a hearing
97 before the court or family support magistrate, and at such hearing such
98 obligor may contest the claimed delinquency and the imposition of the
99 income withholding, seek modification of the withholding order, and
100 claim any lawful exemption with respect to such obligor's income, (D)
101 such obligor has a right to seek modification of the support order by a
102 proper motion filed with the court or family support magistrate, (E)
103 eighty-five per cent of the first one hundred forty-five dollars of
104 disposable income per week are exempt, and (F) the amount of the
105 withholding order may not exceed the maximum percentage of
106 disposable income which may be withheld [pursuant to Section 1673 of
107 Title 15 of the United States Code] under 15 USC 1673, together with a
108 statement of such obligor's right to claim any other applicable state or
109 federal exemptions with respect thereto. The claim form shall contain a
110 checklist identifying the most common defenses and exemptions such
111 that the obligor may check any which apply to the obligor and a space
112 where the obligor may briefly explain the claim or request a

113 modification of or raise a defense to the support order.

114 (2) An obligor shall become subject to withholding to enforce a prior
115 order of support upon the request of the dependent regardless of any
116 delinquency, and whether or not such order is subject to a contingent
117 income withholding. In such cases, the dependent shall cause a notice
118 to be served on such obligor which notice shall comply in all respects
119 with the delinquency notice required under subdivision (1) of this
120 subsection except that such notice shall not be required to allege a
121 delinquency.

122 (d) An obligor may claim a defense based upon mistake of fact, may
123 claim an exemption in accordance with subsection (e) of this section
124 with respect to the withholding order, or may file by motion a
125 modification or defense to the support order being enforced by the
126 withholding, by delivering a signed claim form, or other written notice
127 or motion, with the address of the obligor thereon, indicating the
128 nature of the claim or grounds of the motion, to the clerk of the
129 Superior Court or the assistant clerk of the Family Support Magistrate
130 Division within fifteen days of receipt of notice. On receipt of the claim
131 or motion, the clerk shall promptly enter the appearance of the obligor,
132 set the matter for a short calendar hearing, send a file-stamped copy of
133 the claim or motion to the person or agency of the state to whom the
134 support order is payable and notify all parties of the hearing date set.
135 The court or family support magistrate shall promptly hear and
136 determine the claim or motion and notify the obligor within forty-five
137 days from the date of the notice required under subsection (c) of this
138 section of its determination. Unless the obligor successfully shows
139 cause why the withholding order should not continue in effect, the
140 court or family support magistrate shall order that the outstanding
141 withholding order continue in effect against the nonexempt income of
142 the obligor to the extent provided under subsection (e) of this section.
143 The order shall be a final judgment for purposes of appeal. The effect
144 of the withholding order shall not be stayed on appeal except by order
145 of the court or a family support magistrate.

146 (e) (1) A withholding order shall issue in the amount necessary to
147 enforce a support order against only such nonexempt income of the
148 obligor as exceeds the greater of [(1)] (A) eighty-five per cent of the
149 first one hundred forty-five dollars per week of disposable income, or
150 [(2)] (B) the amount exempt under [Section 1673 of Title 15 of the
151 United States Code] 15 USC 1673, or against any lesser amount which
152 the court or family support magistrate deems equitable.

153 (2) The withholding order shall secure payment of past and future
154 amounts due under the support order and an additional amount
155 computed in accordance with the child support guidelines established
156 in accordance with section 46b-215a, to be applied toward liquidation
157 of any arrearage accrued under such order, unless contested by the
158 obligor after a notice has been served pursuant to subsection (c) of this
159 section, in which case the court or family support magistrate may
160 determine the amount to be applied toward the liquidation of the
161 arrearage found to have accrued under prior order of the court or
162 family support magistrate. In no event shall such additional amount be
163 applied if there is an existing arrearage order from the court or family
164 support magistrate in a IV-D support case, as defined in subdivision
165 (13) of subsection (b) of section 46b-231, as amended.

166 (3) Any investigator or other authorized employee of the Bureau of
167 Child Support Enforcement within the Department of Social Services,
168 or any officer of Support Enforcement Services of the Superior Court,
169 may issue a withholding order entered by the Superior Court or a
170 family support magistrate pursuant to subsection (b) of this section,
171 and shall issue a withholding order pursuant to this subsection when
172 the obligor becomes subject to withholding under subsection (c) of this
173 section.

174 (4) On service of the order of withholding on an existing or any
175 future employer or other payer of income, and until the support order
176 is fully satisfied or modified, the order of withholding is a continuing
177 lien and levy on the obligor's income as it becomes due.

178 (f) Commencing no later than the first pay period in the case of an
179 employer, or the date of periodic payment in the case of a payer of
180 income other than an employer, that occurs after fourteen days
181 following the date of service of an order for withholding and within
182 seven business days of the date the obligor is paid thereafter, an
183 employer or other payer of income shall pay sums withheld pursuant
184 to the withholding order to the state disbursement unit, as required by
185 subsection (p) of this section. The employer or other payer of income
186 (1) shall specify the dates on which each withholding occurred and the
187 amount withheld for each obligor on each such date, and (2) may
188 combine all withheld amounts into a single payment to the state
189 disbursement unit with the portion thereof which is attributable to
190 each individual obligor being separately designated. If an employer or
191 other payer of income fails to withhold from income due an obligor
192 pursuant to an order for withholding or fails to make those payments,
193 such employer or other payer of income is liable to such person for the
194 full amount of income not withheld since receipt of proper notice in an
195 action therefor, and the amount secured in the action shall be applied
196 by such person toward the arrearage owed by the obligor. Such
197 employer or other payer of income shall be subject to a finding of
198 contempt by the court or family support magistrate for failure to honor
199 such order for withholding, provided service of the order is made in
200 accordance with section 52-57, as amended, or by certified mail, return
201 receipt requested. On and after October 1, 2006, an employer may
202 withhold a service fee for the administrative expense of complying
203 with such withholding order not to exceed two dollars per pay period,
204 provided the amount of the withholding including the fee does not
205 exceed the maximum amount of disposable income which may be
206 withheld pursuant to subdivision (1) of subsection (e) of this section.

207 (g) All orders for withholding issued pursuant to this section shall
208 take precedence over any execution issued pursuant to section 52-361
209 of the general statutes revised to 1983, or section 52-361a. Two or more
210 orders for withholding may be levied concurrently under this section,
211 but if the total levy in any week exceeds the maximum permitted

212 under this section, all sums due shall be allocated by the state
213 disbursement unit in proportion to the amount of such orders, giving
214 priority in such allocation to current support.

215 (h) Service of any process under this section, including any notice,
216 may be made in accordance with section 52-57, as amended, or by
217 certified mail, return receipt requested. If service is made on behalf of
218 the state, it may be made by an authorized employee of Support
219 Enforcement Services, or by an investigator or other officer of the
220 Bureau of Child Support Enforcement within the Department of Social
221 Services or by an investigator of the Department of Administrative
222 Services or by the Attorney General. Service of income withholding
223 orders by Support Enforcement Services or by an investigator or other
224 officer of said bureau upon an employer under this section may be
225 made in accordance with section 52-57, as amended, by certified mail,
226 return receipt requested, or by first class mail.

227 (i) An applicant for employment or an employee subject to an order
228 for withholding issued pursuant to this section shall have the same
229 protection from discipline, suspension or discharge by an employer as
230 provided in section 52-361a.

231 (j) There shall be a fine of not more than one thousand dollars
232 imposed on any employer who discharges from employment, refuses
233 to employ, takes disciplinary action against or discriminates against an
234 employee subject to an order for withholding issued pursuant to this
235 section because of the existence of such order for withholding and the
236 obligations or additional obligations which it imposes upon the
237 employer.

238 (k) The employer shall notify promptly the dependent or Support
239 Enforcement Services as directed when the obligor terminates
240 employment, makes a claim for workers' compensation benefits or
241 makes a claim for unemployment compensation benefits and shall
242 provide the obligor's last-known address and the name and address of
243 the obligor's new employer, if known.

244 (l) When an obligor who is subject to withholding under this section
245 is identified as a newly hired employee pursuant to subsection (d) of
246 section 31-2c, the state agency enforcing the obligor's child support
247 order shall, within two business days after the date information
248 regarding such employee is entered into the state directory of new
249 hires, issue a withholding order to the employer of the employee in
250 accordance with subsection (e) of this section.

251 (m) The provisions of this section shall be in addition to and not in
252 lieu of any other remedy available at law to enforce or punish for
253 failure to obey a support order.

254 (n) When a support order is issued in another state and the obligor
255 has income subject to withholding derived in this state, such income
256 shall be subject to withholding in accordance with the provisions of
257 this section, upon the registration of the support order in accordance
258 with sections 46b-213g to 46b-213j, inclusive. Notice of rights to the
259 obligor and the obligor's right to contest such order are governed by
260 sections 46b-213k to 46b-213m, inclusive.

261 (o) An employer who withholds the income of an obligor pursuant
262 to a withholding order issued under subsection (e) or (l) of this section
263 that is regular on its face shall not be subject to civil liability to any
264 individual or agency for conduct in compliance with such order.

265 (p) [All] Each withholding [orders] order issued under this section
266 shall be payable to the state disbursement unit established and
267 maintained by the Commissioner of Social Services in accordance with
268 subsection (j) of section 17b-179. The state disbursement unit shall
269 insure distribution of all money collected under this section to the
270 dependent, the state and the support enforcement agencies of other
271 states, as their interests may appear, within two business days. Each
272 dependent who is not receiving child support enforcement services, as
273 defined in subsection (b) of section 46b-231, as amended, shall be
274 notified upon the issuance of a withholding order pursuant to this
275 section, that such services are offered free of charge by the State of

276 Connecticut upon application to the Bureau of Child Support
277 Enforcement within the Department of Social Services.

278 (q) The judges of the Superior Court may adopt any rules they deem
279 necessary to implement the provisions of this section and sections
280 46b-69a, 46b-178 and 52-361a and such judges, or their designee, shall
281 prescribe any forms required to implement such provisions.

282 Sec. 2. Section 46b-213w of the general statutes is repealed and the
283 following is substituted in lieu thereof (*Effective October 1, 2006*):

284 (a) An income withholding order issued in another state may be
285 sent to the person or entity defined as the obligor's employer under
286 section 52-362, as amended by this act, without first filing a petition or
287 comparable pleading or registering the order in the registry of support
288 orders of the Family Support Magistrate Division.

289 (b) Upon receipt of an income withholding order issued in another
290 state, the obligor's employer shall immediately provide to the obligor
291 (1) a copy of the order, and (2) a copy of the notice and claim form
292 provided by the Department of Social Services pursuant to subsection
293 (c) of this section.

294 (c) The Department of Social Services shall distribute to [all
295 employers] each employer in this state a standard notice and claim
296 form, written in clear and simple language, which shall include:

297 (1) Notice that money will be withheld from the employee's wages
298 for child support and health insurance;

299 (2) Notice of the amount of disposable earnings that are exempt
300 from the income withholding order;

301 (3) Notice that the amount of the income withholding order may not
302 exceed the maximum permitted by federal law under [Section 1673 of
303 Title 15 of the United States Code] 15 USC 1673, together with a
304 statement of the obligor's right to claim any other applicable state or

305 federal exemptions;

306 (4) Notice of the right to object to the validity or enforcement of such
307 income withholding order in a court in this state and of the right to
308 seek modification of the underlying support order in the court of
309 continuing exclusive jurisdiction;

310 (5) Notice of the right to seek the assistance of the Child Support
311 Enforcement Bureau of the Department of Social Services and the toll-
312 free telephone number at which the bureau can be contacted;

313 (6) A claim form which shall include (A) a list of the most common
314 defenses and exemptions to such income withholding order in a
315 manner which allows the obligor to check any of the defenses and
316 exemptions which apply; (B) a space where the obligor may briefly
317 explain the obligor's claim or defense; (C) a space where the obligor
318 may initiate a request for services to modify the support order; (D) a
319 space for the obligor to provide the obligor's address and the name of
320 the town in which the obligor principally conducts the obligor's work
321 for the employer; (E) a space for the obligor to sign the obligor's name;
322 (F) the address of the Bureau of Child Support Enforcement of the
323 Department of Social Services to which the claim form is to be sent in
324 order to contest the validity or enforcement of the income withholding
325 order or to initiate a request for modification; and (G) space for the
326 employer to state the date upon which the form was actually delivered
327 to the obligor.

328 (d) The employer shall treat an income withholding order issued in
329 another state which appears valid if it had been issued by a tribunal of
330 this state.

331 (e) Except as otherwise provided in subsections (f) and (g) of this
332 section, the employer shall withhold and distribute the funds as
333 directed in the withholding order by complying with terms of the
334 order which specify: (1) The duration and amount of periodic
335 payments of current child support, stated as a sum certain; (2) the

336 person or agency designated to receive payments and the address to
337 which the payments are to be forwarded; (3) medical support, whether
338 in the form of periodic cash payment, stated as a sum certain, or
339 ordering the obligor to provide health insurance coverage for the child
340 under a policy available through the obligor's employment, subject to
341 the provisions of subsection (e) of section 38a-497a; (4) the amount of
342 periodic payments of fees and costs for a support enforcement agency,
343 the issuing tribunal and the obligee's attorney, stated as sums certain;
344 and (5) the amount of periodic payments of arrearages and interest on
345 arrearages, stated as sums certain.

346 (f) The employer shall comply with the law of this state for
347 withholding from income with respect to: (1) The [prohibition against
348 an employer's fee for processing an income withholding order; (2) the]
349 maximum amount permitted to be withheld from the obligor's income;
350 and [(3)] (2) the time period within which the employer must
351 implement the withholding order and forward the child support
352 payment.

353 (g) If an employer receives multiple income withholding orders
354 with respect to the earnings of the same obligor, the employer satisfies
355 the terms of the multiple orders if the employer complies with the law
356 of this state to establish the priorities for withholding and allocating
357 income withheld for multiple child support obligees.

358 (h) An employer who complies with an income withholding order
359 issued in another state in accordance with this section shall be immune
360 from civil liability with regard to the employer's withholding of child
361 support from the obligor's income.

362 (i) An employer who wilfully fails to comply with an income
363 withholding order issued by another state and received for
364 enforcement is subject to the same penalties that may be imposed for
365 noncompliance with an order issued by a tribunal of this state.

366 (j) An obligor may contest the validity or enforcement of an income

367 withholding order issued in another state and received directly by an
368 employer in this state in the same manner as if the order had been
369 issued by a tribunal of this state or by mailing to the Bureau of Child
370 Support Enforcement of the Department of Social Services the claim
371 form delivered to the obligor pursuant to subsection (b) of this section,
372 signed by the obligor and containing his address and a copy of the
373 income withholding order. The obligor shall also deliver a copy of
374 such claim form to the employer. If a claim form contesting the validity
375 or enforcement of an income withholding order is received by the
376 employer within fourteen days of the receipt by the obligor of the
377 notice and claim form, imposition of the withholding order shall be
378 stayed and the employer shall not implement the withholding order
379 for a period of thirty days. If the employer receives from the Bureau of
380 Child Support Enforcement a notice that it has received the claim form,
381 the employer shall not implement the withholding order until the
382 claim is decided by a family support magistrate.

383 (k) Upon receipt of a claim form contesting the validity or
384 enforcement of an income withholding order, the Bureau of Child
385 Support Enforcement shall within seven days notify the employer of
386 the receipt of the claim form. The bureau shall also give notice of the
387 contest and of the fact that the order is stayed until the claim is decided
388 by a family support magistrate to (1) the support enforcement agency
389 providing services to the obligee; (2) the obligor's employer; (3) the
390 person or agency designated to receive payments in the income
391 withholding order; and (4) if the obligee's address is known, the
392 obligee. In addition, the bureau shall immediately cause the income
393 withholding order to be registered in this state with the appropriate
394 clerk of the Family Support Magistrate Division and shall comply with
395 the registration requirements of section 46b-213h. The bureau shall also
396 immediately file the claim form on behalf of the obligor with the
397 Family Support Magistrate Division of the Superior Court. The clerk
398 shall promptly enter the appearance of the obligor, schedule a hearing,
399 and give notice of the hearing to the obligor, the Bureau of Child
400 Support Enforcement, the party initiating the income withholding

401 order, and, if the obligee's address is known, the obligee. The clerk
 402 shall proceed in accordance with subsection (d) of section 52-361. The
 403 family support magistrate shall promptly hear and determine the
 404 claim and enter its determination within forty-five days from the date
 405 of the filing of the claim form. In addition to any notice given by the
 406 clerk, upon entry of the decision of the family support magistrate on
 407 the claim, the bureau shall give notice of the decision to the employer,
 408 the party initiating the income withholding order, the obligor and, if
 409 the obligee's address is known, the obligee.

410 (l) If the claim form requests services to modify the support order,
 411 the Bureau of Child Support Enforcement shall assist the obligor to file
 412 a motion for modification with the appropriate tribunal of the state of
 413 continuing exclusive jurisdiction in accordance with the law of that
 414 jurisdiction. The receipt of the request for modification shall constitute
 415 a request for Title IV-D services, but the bureau may require the
 416 making of a formal application. Such assistance shall include, but is
 417 not limited to, providing the obligor with information about how such
 418 a motion is filed, contacting the state of continuing exclusive
 419 jurisdiction on behalf of the obligor to obtain appropriate forms, and
 420 transmitting such forms and applicable information to the appropriate
 421 tribunal in such state.

422 (m) Venue for contested claims under this section shall be the family
 423 support magistrate division of the superior court in the judicial district
 424 in which the obligor resides, provided (1) if the obligor does not reside
 425 in this state, venue shall be in the judicial district in which the obligor
 426 principally conducts his work for the employer who is subject to the
 427 income withholding order, and (2) if there is an existing action
 428 concerning support of the child or children who are the subject of the
 429 income withholding order, the claim shall be filed in that action.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2006	52-362

Section 1	October 1, 2006	52-362
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Sec. 2	October 1, 2006	46b-213w
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Statement of Purpose:

To permit employers to withhold an administrative fee from employee income when processing income withholding orders for child support.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]